

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Wendall Abkes d/b/a City Sanitary
Service**

ADMINISTRATIVE ORDER

NO. 2010-SW- 36

TO: Wendall Abkes
809 Miners St.
Parkersburg, IA
50665

I. SUMMARY

This administrative consent order (Order) requires Wendall Abkes to cease the illegal disposal of solid waste and the illegal operation of a solid waste transfer station without a permit:

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Michelle Johnson
Field Office #2
Iowa Department of Natural Resources
2300 15th St SW
Mason City, IA 50401
641/424-4073

Legal issues/Appeal:

Carrie Schoenebaum
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the

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Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Wendall Abkes d/b/a City Sanitary Service operates a solid waste collection service. At his property in Butler County, Iowa, at Sec. 25, T90N, R17W Monroe Township, Mr. Abkes deposits solid waste which is eventually loaded into a larger truck and then transported to a landfill or transfer station.¹ Dumpsters and roll-offs are located on this property which are used by Mr. Abkes for regular and temporary disposal of solid waste from businesses and residences.
2. On January 28, 2009, the Department received a complaint alleging illegal disposal of construction and demolition waste by Mr. Abkes.
3. On February 9, 2009, the Department investigated the complaint. Michelle Johnson, an Environmental Specialist with the Department, observed a small pile of construction and demolition waste on the southeast portion of Mr. Abkes' property. While on site Ms. Johnson discussed the complaint with Mr. Abkes who stated that he keeps waste on site until it is transferred to a larger dumpster and then it is taken to a landfill. He stated that the existing waste had been on site a few days, the landfill was closed due to high wind and once it reopened he would take the waste there. Ms. Johnson explained that so long as the waste was timely disposed of at the landfill, it was acceptable for him to keep it on site.
4. On April 2, 2009, the Department conducted a follow up investigation of Mr. Abkes' property. The Department observed appliances in and around a dumpster, along with 3 engines and a ramp like structure. It appeared that the ramp structure was being used to transfer solid waste into a dumpster. A large amount of solid waste was observed overflowing from this dumpster. The Department also observed that on the south end of Mr. Abkes' property solid waste was separated into piles. This solid waste included metal and wood. Based on the visual observations and the information previously provided by Mr. Abkes, the Department concluded that Mr. Abkes was using his property as a solid waste transfer station.
5. On April 8, 2009, a Notice of Violation was sent to Mr. Abkes for illegal storage and handling of solid waste and operation of a solid waste transfer station without a permit.
6. On June 9, 2009, the Department conducted a follow up investigation and

¹ This property is locally known as 809 Miners St Parkersburg, IA 50665

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determined that improper disposal of solid waste continued. Appliances were stored in a load out dumpster and the ramp structure was still in use. Following this inspection, a Notice of Violation was mailed to Mr. Abkes which discussed the above violations.

7. On July 22, 2009, the Department conducted another inspection during which Mr. Abkes provided some documentation the he had properly disposed of some of the waste that had been on his property. Nevertheless, waste was still located around the ramp structure. On July 23, 2009, a letter was mailed to Mr. Abkes outlining the violations. In this letter the Department asked that Mr. Abkes come into compliance by August 25, 2009.

8. On September 21, 2009, another inspection was conducted. During this inspection the Department observed waste being transferred from a dump truck on the ramp to a load out dumpster below. The waste surrounding the ramp structure had not been removed.

9. Lastly, on October 8, 2009, the Department again went to Mr. Abkes' property and determined that he was still in noncompliance.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.305(1) provides, in part, that "The director shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects."

2. Iowa Code section 455B.301(21) states "Sanitary disposal project" means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director. Further, 567 IAC 106.2 states that a transfer station is a sanitary disposal project.

3. Rule 567 100.2 defines "Transfer station" as a fixed or mobile intermediate solid waste disposal facility for transferring loads of solid waste, with or without reduction of volume, to another transportation unit. The subject site meets this definition of transfer station.

4. Rule 567 IAC 102.1 states that no public or private agency shall construct or operate a sanitary disposal project without first obtaining a permit from the Director. Mr. Abkes did not obtain a permit from the Director prior to operation of the transfer station. Therefore the above-stated facts disclose a violation of this provision.

5. Rule 567 IAC 118.4(1) states that "[a]ny person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant

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lines and compressors, and mercury-containing components from being damaged and allowing a release into the environment." The appliances stored on Mr. Abkes' property were not stored in this manner. Therefore, the above-stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, Mr. Abkes is hereby ordered to do the following:

1. Immediately cease the illegal operation of a transfer station;
2. Within 30 days, provide documentation to the Department that all solid waste on site has been properly handled and cleaned up; and
3. Mr. Abkes shall pay a penalty in the amount of \$7,000.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 567--10 of the IAC. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. The Department estimates that Mr. Abkes saved a substantial amount of money and time by illegally operating a transfer station. Mr. Abkes was able to avoid costs of fuel, routine wear and tear on vehicles and the cost of proper disposal. In addition, when the landfill was closed, Mr. Abkes was able to continue to operate because he emptied his trucks into the dumpster located on his property. Therefore, \$1,000.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. Sanitary disposal project permitting requirements are designed to protect human health and the environment. The failure to obtain a permit denies the public and the Department information necessary to assess the risk of harm posed by a facility and to

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assure that the facility is being operated in a manner that protects human health and the environment. Furthermore, the permit requirements are designed to provide information to the cities and counties served by this facility in regard to waste generation and recycling rates. This information is essential to the implementation of the generator communities' waste reduction program as required by law. This information is further necessary in order to set the state's tonnage fee pursuant to Iowa Code sections 455D.3 and 455B.310. Based on the above considerations, \$2,000.00 is assessed for this factor.

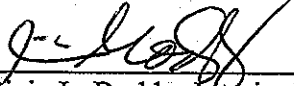
c. Culpability. In addition to the general duty to know the law, Mr. Abkes had been repeatedly informed of the applicable regulations and in June 2009 Mr. Abkes stated that he had stopped the use of the transfer station. However, the Department documented use of the transfer station in September. Therefore, \$4,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Carrie Schoenebaum, attorney for the Department, at (515) 281-0824 for more information regarding appeal procedures and resolution of this Order.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order.



Patricia L. Boddy, Interim Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7 day of
October, 2010

Field Office #2; Carrie Schoenebaum; Michelle Johnson; I.C(1), VI.B(c), VI.B(e), VII.C(1)